83-899

No.

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ALEXANDER L. STEVAS,
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

In re EDWARD RONWIN,

Petitioner.

# PETITION FOR A WRIT OF MANDAMUS TO THE SUPREME COURT OF ARIZONA

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Petitioner pro se

## MATTER PRESENTED TO JUSTIFY WRIT

The Supreme Court of Arizona refuses to obey the Due Process Clause of the Fifth and Fourteenth Amendments; this Court's decisions; and its own rules and decisions which require that bar applicants be accorded an opportunity for hearing with due process safeguards before final determination of their applications for admission to practice law.

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## OPINION BELOW

The Order of the Supreme Court of Arizona which sparks this Petition was entered on September 14, 1983, in In the Matter of the Application for Admission to the State Bar of Arizona of Edward Ronwin, No. SB 52-10, and is reproduced in the Appendix. No opinion accompanied said Order.

## JURISDICTION

Jurisdiction to consider this matter is lodged in this Court by the terms of 28 U.

S.C. § 1257 and 1651, and Rules 26 and 27 of this Court. See also District of Columbia Court of Appeals v. Feldman, ____U.S. _____, 103 S.Ct. 1303, 1314-1316 (1983). This Petition is filed within 90 days after September 14, 1983.

CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution,

Fifth Amendment:

No person shall * * * be deprived of life, liberty, or property, without due process of law * * *

Fourteenth Amendment: Section 1.

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## STATEMENT OF THE CASE

On June 6, 1983, Petitioner ("Ronwin") filed his tenth application for admission to the State Bar of Arizona directly with the Arizona Supreme Court which was assigned No. SB 52-10. Ronwin had passed the July, 1982 Arizona bar examination. On July 25, 1983, Ronwin filed a document entitled, "Request," which asked the Arizona court for a written statement of all charges and/or reasons that said court had, or believed itself to have, for refusing to admit Ronwin to the State Bar of Arizona; and for an evidentiary hearing on any such charges or reasons, and that at any such hearing or prior thereto, Ronwin have available discovery and subpoena process, and the other safeguards of due process such as, inter alia, the right to call witnesses and submit evidence, to cross-examine adverse witnesses and evidence and to have an impartial decisionmaker. On September 14, 1983,

said court entered the Order (see App.) denying without comment said application and, thereby, said "Request."

## REASONS FOR GRANTING THE WRIT

The Supreme Court of Arizona refuses to obey the Due Process Clause of the Fifth and Fourteenth Amendments; this Court's decisions; and its own rules and decisions which require that bar applicants be accorded an opportunity for hearing with due process safeguards before final determination of their applications for admission to practice law.

### 1. Party Against Whom Relief is Sought

Relief is sought against the Supreme Court of Arizona.

### 2. The Relief Sought Is Not Available In Any Other Court

In Feldman, 103 S.Ct. at 1314-1316, this Court declared that a bar applicant can take his personal claim arising from a judicial action by a State's highest court only to

this Court, 28 U.S.C. § 1257, 103 S.Ct. at 1314-1316. Ronwin has previously sought relief from this Court. The last such occasion, which was entitled Ronwin v. Supreme Court of Arizona, this Court's No. 83-465, concerned Ronwin's 8th and 9th (Consolidated) applications to the Arizona court wherein said court, as it had done with five earlier applications, denied the 8th/9th application without prior notice of specific charges, without a hearing and without due process.[1]

This Court denied certiorari with the result that Ronwin has been denied his Fifth

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[1] As respects that 8th/9th application, the Arizona court decided the matter by "judicial notice" of untested and untried allegations attributed to Ronwin while declaring that the truth of said allegations was of no importance to said court's determination which was without an evidentiary hearing and due process. Said court persisted in labelling Ronwin as not mentally able to practice law while admitting that the medical evidence was to the contrary.

and Fourteenth Amendment rights to due process by said court with uninterrupted regularity since 1976, and without any viable remedy. Now as to Ronwin's tenth application, said court obviously persists in unlawfully refusing to recognize and honor Ronwin's Fifth and Fourteenth Amendment rights.

Ronwin does not seek a full review of the Arizona court's action in denying Ronwin's tenth application, but merely asks for an Order to said Court to obey constitutional requirements by offering Ronwin an opportunity for a full evidentiary hearing accompanied with all due process safeguards before said court decides any application for admission made by Ronwin.[2]

---

[2] Pursuant to Feldman, Ronwin brought a general challenge to the administration of the Arizona court's rules by which said court denies applications without any hearing or due process based on the Arizona court's admitted denial of a motion by Ronwin in said 8th/9th application proceeding for a hearing. The U.S. District Court for the District

3. The Justification For Issuance of the Writ of Mandamus

17A Ariz. Rev. Stats., Rule 28(c)XII is the only rule of the Arizona court which concerns hearing procedures in cases of contested applications for bar admission. Subsection C is vague as to whether at least one evidentiary hearing is required. Subsection D permits discovery and subpoena process for participants in any hearing and Subsection F clearly makes the hearing requirement discretionary with the Arizona court. Said written rules are in conflict with this Court's holdings in Willner v. Committee on Character and Fitness, 373 U. S. 96, 103-105, 83 S.Ct. 1175, 1180-1181

2-Cont'd.
of Arizona has recently entered an Order granting summary judgment to the defendants (members of said court) and enjoining Ronwin from bringing challenges to the denial of due process in the determination of applications by the Arizona court and awarding attorney's fees against Ronwin even though Ronwin is the victim,since 1976, of a continuous and absolute denial of due process, which practice faces other applicants at the whim of the Arizona court. Obviously, this is the last Court where Ronwin can get an order requiring that his rights be respected.

(1963); Schware v. Board of Bar Examiners of State of New Mexico, 353 U.S. 232, 238, 77 S.Ct. 752, 756, 1 L.Ed.2d 796 (1957), and Greene v. McElroy, 360 U.S. 474, 492, 79 S.Ct. 1400, 1411 (1959).

The Arizona court itself recognized the imperatives of the Fourteenth Amendment in Application of Levine, 97 Ariz. 88, 397 P. 2d 205, 207 (1964):

> We have held on various occasions that one may not be excluded by state action from a business, profession or occupation in a manner or for reasons which contravene the due process clause of the Fourteenth Amendment of the Constitution of the United States, and that due process means that there must be given notice of time and place of hearing, a reasonable definite statement of the charge or charges, the right to produce witnesses and to examine adverse witnesses and to have a full consideration and determination according to evidence before the body with whom the hearing is held (citations omitted). We believe that there is inherent in our democratic system the right to compete freely on an equal basis for the material goods of existence and that the right is protected by the due process and equal protection clauses of the Fourteenth Amendment. See Schware v. Board of Bar Examiners, 353 U.S. 232, 77 S.Ct. 752, 1 L.Ed.2d 796.

One may take the quoted statement as said court's interpretation of its written rules. As recounted in the Statement of the Case, Ronwin requested just what the Arizona court requires in the above quotation from Levine, but the result has been for Ronwin's six prior applications and for the application on which this Petition is based, an absolute denial of due process with all doors to remedy shut, except in this Court.

## CONCLUSION

Unless this Court issues a Writ of Mandamus to the Supreme Court of Arizona ordering that no application for admission to the State Bar of Arizona by Ronwin may be denied without a full evidentiary hearing accompanied by all due process safeguards, Ronwin's rights to such due process under the Fifth and Fourteenth Amendments, and under Willner, Schware and Greene, supra, will continue to be a hollow promise.

Respectfully submitted

Edward Ronwin
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(515) 223-8819
Petitioner pro se

DATED: November 30, 1983

(APPENDIX FOLLOWS)

## APPENDIX

SUPREME COURT
STATE OF ARIZONA

| | |
|---|---|
| IN THE MATTER OF THE APPLICATION FOR ADMISSION TO THE STATE BAR OF ARIZONA OF EDWARD RONWIN | September 14, 1983<br><br>Supreme Court No. SB 52-10 |

The following action was taken by the Supreme Court of the State of Arizona on September 13, 1983 in regard to the above-entitled cause:

"ORDERED: The Application is hereby denied.

Vice Chief Justice Frank X. Gordon, Jr. did not participate in the determination of this matter."

S. ALAN COOK, Clerk

By Kathleen E. Kempley
Deputy Clerk

TO:
Edward Ronwin
Box 3585
Urbandale, Iowa 50322

Office - Supreme Court, U.S.
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## QUESTIONS PRESENTED

1) Does the Petition present a case or controversy within the meaning of U.S. CONST. art. III, § 2?
2) If a case or controversy is presented, has Petitioner established a clear and indisputable right to issuance of a writ of mandamus?

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## JURISDICTION

Petitioner has no standing to invoke the Court's jurisdiction because he presents no case or controversy within the meaning of U.S. CONST. art. III, § 2. The Court therefore lacks jurisdiction to consider the Petition.

## CONSTITUTIONAL PROVISION INVOLVED

Article III, Section 2, Constitution of the United States, provides in relevant part:

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another State;--between Citizens of different States;--between Citizens of the same State claiming Lands under

Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

## STATEMENT OF THE CASE

Petitioner filed his tenth application for admission to the State Bar of Arizona on June 6, 1983, which application was designated No. SB 52-10. Respondent denied Petitioner's ninth application for admission on July 6, 1983 in In re Ronwin, ____ Ariz. ____, 667 P.2d 1281, cert. denied sub nom. Ronwin v. Supreme Court of Arizona, 52 U.S.L.W. 3370 (U.S. Nov. 7, 1983).

On July 25, 1983, while his tenth application was pending, Petitioner filed a document entitled "Request," demanding that he be given a "written statement of all charges and/or reasons that this [Respondent] Court has, or believes itself to have, for refusing to admit RONWIN to the State Bar of Arizona." In his "Request" he also demanded an evidentiary hearing "presided over by an impartial decisionmaker(s)," preceded by discovery, and affording Petitioner and Respondent

the opportunity to call, examine and cross-examine witnesses and to present documentary evidence. [Respondent's App. at 23-24.] The "Request" was filed in Cause No. SB 52-10 and presumably related to Petitioner's tenth application. Without explicitly acting upon the "Request," Respondent denied Petitioner's tenth application for admission to the State Bar of Arizona on September 13, 1983. That decision has not been brought before this Court for review.

## SUMMARY OF ARGUMENT

Petitioner fails to present a case or controversy within the meaning of U.S. CONST. art. III, § 2. He has not sought review of Respondent's denial of his tenth application for admission. That determination has become final and binding upon him. Petitioner asks the Court to order that no application by him for admission to the State Bar of Arizona may be denied by Respondent without following prescribed procedures. This is nothing more than a request for an advisory opinion. Since each application must be considered on its own merit and in the context of the facts presented by it, this Court could do no more than state general guidelines to be applied in hypothetical situations. Thus, there is no case or controversy over which the Court has jurisdiction.

Even if the Court has jurisdiction to consider the Petition, its allegations do

not present a viable claim for mandamus relief. The remedy of mandamus has long been recognized as an extraordinary, even drastic, remedy, to be invoked only with the utmost caution. A party seeking issuance of such a writ must show that three criteria are satisfied, i.e., the writ will be in aid of the Court's appellate jurisdiction, exceptional circumstances are present warranting the exercise of the Court's discretionary powers, and adequate relief is otherwise unavailable. The right to issuance of the writ must be clear and indisputable. Measured by these standards, the Petition now before this Court presents a wholly inappropriate case for issuance of the writ.

Congress and this Court have determined that a writ of mandamus will issue only when necessary or appropriate in aid of the Court's appellate jurisdiction. The writ has been used traditionally to

confine an inferior court to a lawful exercise of its prescribed jurisdiction, or to compel an inferior court to exercise its authority when it is its duty to do so. Neither of these circumstances exists here.

Petitioner does not contend that Respondent's actions in denying his application for admission and interpreting its own rules in light of constitutional requirements to determine what procedures were necessary are beyond its jurisdiction. Such a contention would be meritless, because plainly those actions were taken in the course of the exercise of Respondent's jurisdiction to decide issues properly before it. Even if Respondent's decision were erroneous, it would not involve an abuse of judicial power. Further, there is no action required of Respondent which it has not already taken. Therefore, the writ could not be in aid of

this Court's appellate jurisdiction.

Mandamus is also inappropriate because Petitioner has pointed to no exceptional circumstances warranting the exercise of this Court's discretionary powers.

Finally, adequate relief was available to Petitioner had he elected to file a petition for writ of certiorari challenging the denial of his tenth application. His failure to do so constitutes a forfeiture of any opportunity for review by this Court. Mandamus is not a substitute for the normal appellate process.

## ARGUMENT

### I.

THE COURT HAS NO JURISDICTION OVER THE PETITION BECAUSE IT PRESENTS NO CASE OR CONTROVERSY.

This Court has often declined invitations "to decide hypothetical issues or to give advisory opinions . . . ." E.g., Princeton University v. Schmid, 455 U.S. 100, 102 (1982) (per curiam). The Constitution limits the jurisdiction of this Court to those disputes presenting an actual case or controversy within the meaning of Article III, § 2. The Petition does not satisfy this jurisdictional prerequisite.

Petitioner invokes this Court's aid in the form of a writ of mandamus.[1]

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[1] Petitioner cites 28 U.S.C. § 1651 and Sup. Ct. R. 26 and 27 as bases for this Court's jurisdiction to issue such a writ. He also cites 28 U.S.C. § 1257, although (Footnote 1 continued.)

Although it is unclear whether Petitioner intends the writ to affect consideration of his tenth application for admission, Respondent's denial of that application is no longer open to challenge.[2] The current Petition can relate only to subsequent applications, if any, filed by Petitioner.

Responsibility for the critical

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(Footnote 1 continued.)

it is clear from his Petition that he is not seeking review by writ of certiorari. He states that he "does not seek a full review of the Arizona court's action in denying Ronwin's tenth application, but merely asks for an Order to said Court to obey constitutional requirements by offering Ronwin an opportunity for a full evidentiary hearing accompanied with all due process safeguards before said court decides any application for admission made by Ronwin." [Footnote omitted; Petition at 6.]

[2] Respondent's denial of Petitioner's tenth application for admission was subject to this Court's review by writ of certiorari. District of Columbia Court of Appeals v. Feldman, ____ U.S. ____, 103 S. Ct. 1303, 1314 n.15 (1983); 28 U.S.C. § 1257. Having failed to request such review, Petitioner is not now free to challenge denial of that application.

function[3] of supervising the conduct of lawyers on behalf of the State of Arizona, including ultimate responsibility for admitting candidates to the practice of law, is vested in Respondent. In re Anonymous Member of the State Bar of Arizona, 128 Ariz. 238, 239, 624 P.2d 1286, 1287 (1981); In re Ronwin, ____ Ariz. ____, 667 P.2d 1281, 1283, cert. denied sub nom. Ronwin v. Supreme Court of Arizona, 52 U.S.L.W. 3370 (U.S. Nov. 7, 1983). Respondent has declared that each application for admission to the Bar must be judged on its own merit. In re Ronwin,

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[3] This Court has recognized that "[t]he interest of the States in regulating lawyers is especially great since lawyers are essential to the primary governmental function of administering justice, and have historically been 'officers of the courts.'" Goldfarb v. Virginia State Bar, 421 U.S. 773, 792 (1975). See also District of Columbia Court of Appeals v. Feldman, ___ U.S. ___, 103 S. Ct. 1303, 1315-16 n.16 (1983); Middlesex County Ethics Committee v. Garden State Bar Ass'n, 457 U.S. 423, 434-35 (1982).

supra, 667 P.2d at 1284. Petitioner ignores this fact, seeking instead a blanket pronouncement prescribing procedural safeguards that Respondent must employ in considering future applications, regardless of the circumstances presented by those applications. By definition this would be an advisory opinion. This Court has no jurisdiction to entertain a Petition making such a request.

II.

MANDAMUS RELIEF IS INAPPROPRIATE IN THIS ACTION, BECAUSE PETITIONER HAS FAILED TO ESTABLISH A CLEAR AND INDISPUTABLE RIGHT TO SUCH RELIEF.

Petitioner must show that three criteria are met in order to justify the exercise of this Court's discretion in issuing a writ of mandamus: 1) the writ will be in aid of the Court's appellate jurisdiction; 2) exceptional circumstances are present warranting the exercise of the

Court's discretionary powers; and 3) adequate relief cannot be had in any other form or from any other court. Sup. Ct. R. 26. He must also demonstrate that his right to issuance of the writ is "clear and indisputable." Allied Chemical Corp. v. Daiflon, Inc., 449 U.S. 33, 35 (1980) (per curiam); Bankers Life & Casualty Co. v. Holland, 346 U.S. 379, 384 (1953). Petitioner has not shown that any of these criteria is satisfied.

A. The writ would not be in aid of the Court's appellate jurisdiction.

From its earliest days this Court has declared consistently that the writ of mandamus will issue only in the exercise or in aid of the exercise of the Court's appellate jurisdiction. Marbury v. Madison, 5 U.S. (1 Cranch) 137, 175 (1803); Chandler v. Judicial Council, 398 U.S. 74, 86 (1970); 28 U.S.C. § 1651(a); Sup. Ct. R. 26. The writ has been used

traditionally to confine an inferior court to a lawful exercise of its prescribed jurisdiction, or to compel an inferior court to exercise its authority when it is its duty to do so. Kerr v. United States District Court, 426 U.S. 394, 402 (1976).

Petitioner does not allege that Respondent acted beyond its jurisdiction in denying his tenth application for admission to the State Bar, or in interpreting its own rules in light of constitutional requirements to determine what procedures were necessary. Indeed, those functions are undoubtedly within Respondent's jurisdiction.

The question must be, then, whether the writ sought here is necessary to compel Respondent to exercise its authority when it has a duty to do so. Plainly this is not such a case. Respondent has ruled on

. . .

. . .

Petitioner's applications for admission.[4]

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[4] Petitioner complains that Respondent's rules and decisions "require that bar applicants be accorded an opportunity for hearing with due process safeguards before final determination of their applications for admission to practice law." [Petition at 4.] Yet Respondent has held that, given the circumstances requiring denial of Petitioner's ninth application, no evidentiary hearing was necessary. In re Ronwin, ____ Ariz. ____, 667 P.2d 1281, 1289-90, cert. denied sub nom. Ronwin v. Supreme Court of Arizona, 52 U.S.L.W. 3370 (U.S. Nov. 7, 1983). To the extent that that holding turns upon interpretation of Arizona court decisions and rules, it is conclusive. See Gurley v. Rhoden, 421 U.S. 200, 208 (1975); Moore v. Illinois Central Railroad Co., 312 U.S. 630, 633-34 (1941). Petitioner does not suggest that the circumstances compelling rejection of his ninth application ceased to exist before Respondent ruled on his tenth application.

Further, this Court has long held that a writ of mandamus cannot be used to direct a subordinate court to rule in a particular fashion. E.g., Bankers Life & Casualty Co. v. Holland, 346 U.S. 379, 382-83 (1953); Ex parte Perry, 102 U.S. 183, 186 (1880); Ex parte Newman, 81 U.S. (14 Wall.) 152, 169-70 (1871); Ex parte Secombe, 60 U.S. (19 How.) 9, 15 (1856). Therefore, mandamus is unavailable to Petitioner as a tool to compel Respondent to adopt his view of the procedure

(Footnote 4 continued.)

Since Respondent has performed the function required of it by its jurisdiction, mandamus is unnecessary in aid of this Court's appellate jurisdiction.

B. No exceptional circumstances exist that warrant the exercise of this Court's discretionary powers.

Petitioner has pointed to no circumstance that would justify invocation of this Court's discretionary powers in his aid. The Court has previously ruled that inconvenience and hardship caused by delay in resolution of a dispute are insufficient to warrant use of the mandamus remedy. Bankers Life & Casualty Co. v. Holland, 346 U.S. 379, 383-84 (1953). Even if Petitioner's arguments were correct, he could establish no

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(Footnote 4 continued.)

required in considering his application for admission to the State Bar.

circumstances more compelling than these.

C. Adequate relief was available through normal appellate review had Petitioner chosen to request it.

This Court declared more than a century ago:

> The general principle which governs proceedings by mandamus is, that whatever can be done without the employment of that extraordinary remedy, may not be done with it. [Emphasis in original.]

Ex parte Rowland, 104 U.S. 604, 617 (1881). The policy against piecemeal appellate review and the problems caused by making members of the judiciary litigants, as well as the Court's traditional reluctance to use this extraordinary writ, have ensured the continuing vitality of this principle. E.g., Allied Chemical Corp. v. Daiflon, Inc., 449 U.S. 33, 35-36 (1980) (per curiam); Helstoski v. Meanor, 442 U.S. 500, 506 (1979); Kerr v. United States District Court, 426 U.S. 394, 402-03

(1976); Chandler v. Judicial Council, 398 U.S. 74, 86 (1970).

In District of Columbia Court of Appeals v. Feldman, ___ U.S. ___, 103 S. Ct. 1303, 1315 (1983), the Court noted that it alone could review a state court's final judgment in a bar admission matter. The fact that Petitioner elected not to file a petition for writ of certiorari from denial of his tenth application does not mean that no other form of relief was available. It simply means that he forfeited any opportunity he had for review by this Court. That election does not make this case appropriate for mandamus. See In re Green, 141 U.S. 325, 326-27 (1891). If Petitioner files an application in the future, and if that application is denied, that denial would also be subject to this Court's review by writ of certiorari. The writ of mandamus is not a substitute for the normal

appellate process.

D. The decisions of this Court relied on by Petitioner do not support issuance of a writ of mandamus in this case.

Petitioner relies on four decisions of this Court to support the relief he seeks. All are inapposite.[5] In Schware v. Board of Examiners of New Mexico, 353 U.S. 232 (1957), the Court reversed the decision of the New Mexico Supreme Court, which had upheld the Board's decision not to permit Schware to take the bar examination. The Court held that the record contained no evidence that rationally justified a finding that Schware was morally unfit to practice law, and therefore the denial of an opportunity to take the examination deprived Schware of due process. Id. at 246-47. Unlike the review sought in Schware, Petitioner in the present

[5]It is worthy of note, however, that all four cases came to this Court by writ of certiorari, not writ of mandamus.

action does not ask this Court to review Respondent's denial of his tenth application on the merits. Schware is simply irrelevant to the matters raised in the Petition.

The decision in Greene v. McElroy, 360 U.S. 474 (1959), addressed the issue of whether the Department of Defense was authorized to establish a program which could deny security clearances on the basis of confidential information, and in doing so bypass traditional rights of confrontation and cross-examination. Id. at 493. The Court found that neither the President nor Congress had given such authority to the Department of Defense. It declined to consider whether such a program, if authorized, would have conformed to the Constitution. Id. at 508. Thus, the Court never reached the issue which Petitioner attempts to raise here.

The Court in Willner v. Committee on Character & Fitness, 373 U.S. 96 (1963), reviewed an order of the Court of Appeals of New York, affirming denial of an application for admission to the practice of law. In that case the applicant had never been advised of the bases for the conclusion that he had failed to demonstrate his good character. Denial of admission to the Bar, in view of the lack of notice or opportunity to contest the reasons for this conclusion, constituted denial of due process. Id. at 106.

The procedure condemned in Willner bears no relation to that accorded Petitioner. Respondent described in In re Ronwin, ___ Ariz. ___, 667 P.2d 1281, 1284 (1983), the procedure followed in ruling on Petitioner's ninth application. That procedure included notice of the scope of Respondent's review of the facts from designated sources, an opportunity for

Petitioner to file a memorandum addressing both the procedure and the issues raised by the record to be considered, and an opportunity to submit by affidavit or offer of proof any factual matter which he wished Respondent to consider. In denying his ninth application, Respondent explained in great detail the grounds for its decision, and concluded by stating:

> Applicant will be permitted to reapply when and if he can establish that he is able to control his conduct in such a manner that the bar and bench will have some assurance that his behavior will conform to that which is expected of lawyers in our system of justice.

667 P.2d at 1291.

Petitioner cannot claim in good faith that he had no notice of the deficiencies found by Respondent. Further, Petitioner made no effort, in connection with his tenth application, to demonstrate greater control of his conduct.

Finally, the recent decision in

District of Columbia Court of Appeals v. Feldman, ___ U.S. ___, 103 S. Ct. 1303 (1983), also does not support the Petition. There the Court held that the United States District Court had no jurisdiction to review refusals to waive the requirement that an applicant graduate from a law school approved by the American Bar Association before becoming a member of the District of Columbia Bar. Id. at 1315. However, the District Court did have jurisdiction to consider a general challenge to the constitutionality of the District of Columbia Court of Appeals rule imposing that requirement. Id. at 1315-16. Feldman simply does not lend support to Petitioner's allegation that Respondent has erred, nor does it endorse an attempt to use the mandamus procedure under the circumstances of this case.

## CONCLUSION

For the reasons set forth above, the Petition should be denied.

RESPECTFULLY SUBMITTED this 30th day of December, 1983.

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## APPENDIX

EDWARD RONWIN
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IN THE SUPREME COURT

OF THE STATE OF ARIZONA

| | | |
|---|---|---|
| In the Matter of | ) | Cause No. SB 52-10 |
| | ) | |
| EDWARD RONWIN | ) | REQUEST |
| | ) | |

RONWIN hereby requests:

1. A written statement of all charges and/or reasons that this Court has, or believes itself to have, for refusing to admit RONWIN to the State Bar of Arizona.

2. An evidentiary hearing on any such charges and/or reasons, including:

(a) an adequate pre-hearing discovery time and the availability of subpoena process to command the presence of witnesses at depositions.

(b) an evidentiary hearing at a convenient time and place.

(c) the hearing to respect and

allow:

(i) the right of RONWIN to call any witnesses he may choose and the right of RONWIN to examine any such witnesses; the Court and/or its agents to have the same right.

(ii) the right of RONWIN and of the Court and/or its agents to cross-examine any witness.

(iii) the right to present documentary evidence and of RONWIN and of the Court and/or its agents to inspect and/or to cross-examine upon any evidence.

(iv) the hearing to be presided over by an impartial decisionmaker(s).

These elements are required under due process. RONWIN has previously cited and quoted on numerous occasions to this Court, decisions of the United States Supreme Court which make such a hearing mandatory. Those decisions include: Schware v. Board of Bar Examiners of State

of N.M., 353 U.S. 232, 238-239, 77 S.Ct. 752, 756, 1 L.Ed.2d 796 (1957); Greene v. McElroy, 360 U.S. 474, 492, 496-497, 79 S.Ct. 1400, 1411, 1413-1414 (1959); Goldberg v. Kelly, 397 U.S. 254, 90 S.Ct. 1011, 1017, 1020-1022 (1970). Additionally, the case of Willner v. Committee on Character and Fitness, 373 U.S. 106, 83 S.Ct. 1175 (1963) specifically forbids the determination of (contested) applications for Bar admission without an adequate notice from "Government" of what it proposes and without a "full" hearing which the U.S. Supreme Court defines as a "fair and open" hearing. The Willner decision specifically eschews the notion that merely allowing the submission of "evidence" meets the requirements of due process under the Fourteenth Amendment. Thus, the Court in Willner exclaimed, 373 U.S. at 103-104, 83 S.Ct. at 1180:

> We have emphasized in recent years that procedural due process often requires confrontation and cross-examination of those whose word deprives a person of his livelihood. See Greene v. McElroy . . and cases cited. That view has been taken by several state courts when it comes to procedural due process and the admission to practice law . . (citing, inter alia, Application of Burke, 87 Ariz. 336, 351 P.2d 169) . . . We think the need for confrontation is a necessary conclusion from the requirements of procedural due process in a situation such as this (i.e., a Bar application) . . . (last parenthetical comment added).

Continuing, Willner, 373 U.S. at 105, 83 S.Ct. at 1181:

> But a 'full hearing' -- a fair and open hearing -- requires more than that. * * * Those who are brought into contest with * * * Government in a quasi-judicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the Government proposes and to be heard upon its proposals before it issues its final command.' Morgan v. United States, 304 U.S. 1, 18-19, 58 S.ct. [sic] 773, 776, 82 L.Ed. 1129. Petitioner has no opportunity to ascertain and contest the bases of the Committee's reports to the Appellate Division, and the Appellate Division gave him no separate hearing. Yet, '[t]he

> requirements of fairness are not exhausted in taking or consideration of evidence, but extend to the concluding parts of the procedure as well as to the beginning and intermediate steps' . .

Those "steps" obviously include the "confrontational" aspects of due process; that is, a full (fair and open) hearing.

WHEREFORE, RONWIN requests:

1. a written statement of the charges and/or reasons for this Courts refusal to admit RONWIN on this (SB 52-10) application to the State Bar of Arizona; and,

2. an evidentiary, full hearing--one which affords all the requirements of due process as declared by the U.S. Supreme Court.

/s/ Edward Ronwin
Edward Ronwin, Applicant pro se

## CERTIFICATE OF SERVICE

Three copies of the foregoing Brief in Opposition to Petition for a Writ of Mandamus to the Supreme Court of Arizona and accompanying Appendix were served by certified mail, return receipt requested, postage prepaid, on December 30, 1983, on:

Edward Ronwin
P. O. Box 3585
Urbandale, Iowa 50322.

Mr. Ronwin is the only party on whom service of this Brief in Opposition is required.

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No. 83-899

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

In re EDWARD RONWIN,

Petitioner.

# REPLY TO BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF MANDAMUS TO THE SUPREME COURT OF ARIZONA

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No. 83-899

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## ARGUMENT

Respondent obfuscates. Petitioner, (Ronwin) does not challenge Respondent's determination of "each application for admission to the Bar * * * on its own merit," Res. Br. at 9. What Ronwin challenges is the continued denial of Ronwin's applications for bar admission without (1) a clear statement of the charges to be heard; without (2)opportunity for pre-hearing discovery; without (3) an evidentiary hearing at

which Ronwin can call his witnesses and cross-examine any adverse witnesses and items of evidence; and, without (4) an impartial decisionmaker.

The reason the actual denial of the 10th application is not directly challenged (Res. Br. at 8) is that there was no statement of the specific charges against Ronwin and no hearing whatsoever; merely an order of denial (Pet. App. 1). What, therefore, is reviewable is not an uninformative order of Respondent merely stating that Ronwin's 10th application is "denied," which creates no record for this, or any court, to operate upon, but the procedure whereby Respondent refuses to allow all due process in making its denial. That contravenes this Court's holding in Willner v. Comm. on Character & Fitness, 373 U.S. 96, 103-105, 83 S.Ct. 1175, 1180-1181 (1963).

When Respondent writes (Res. Br. at 19): "The procedure condemned in Willner bears

no relationship to that accorded Petitioner," Respondent distorts. As in Willner, Ronwin's 10th application was denied without real notice of charges (or any for that matter), and without any hearing whatsoever. Likewise, the allegations that Petitioner was noticed "of the scope of Respondent's review of the facts," (Res. Br. at 19)(with respect to Ronwin's 9th application--which is not in issue herein), are false. No specific charges were given to Ronwin with respect to said 9th application and, definitely none were given with respect to the 10th application which gave rise to the Petition herein. The additional description of the "due process" allegedly accorded to Ronwin (again with respect to the 9th, not 10th application)(Res. Br. at 20), is itself an admission that due process was denied in the procedure by which the 9th application was determined and, certainly as to the 10th application, the only "due process"

was to have the application filed and then declared "denied," without any intervening hearing or other procedure.

Contrary to Respondent's position (Res. Br. at 10), the issuance of the Writ will not be an "advisory opinion;" but, also contrary to Respondent's position (Res.Br. at 12), the issuance of the Writ will "compel an inferior court to exercise its authority when it is its duty to do so." The issuance of the Writ will require the Arizona Supreme Court to honor this Court's declarations in Willner, supra which bar denials of bar applications without evidentiary hearings and without the right to call and to cross-examine witnesses and to have an impartial decisionmaker. Again, contrary to Respondent's posture (Res.Br. at 12) and to the extent that the Arizona Supreme Court denied Ronwin's 10th application without due process, said Court acts "beyond its jurisdiction."

The Writ of Mandamus will stop the practice of the Arizona Supreme Court from refusing to allow evidentiary hearings with prior specific notice of charges and with prior opportunity for discovery and with the other elements of due process, when said Court determines Ronwin's application(s).

That will be so whether or not said Writ requires that the order denying Ronwin's 10th application be vacated (Pet. App. at 1), or addresses future applications by Ronwin or any other party.

Lastly, in its discretion, this Court may consider the Petition for the Writ of Mandamus to be one for a Writ of Certiorari.

CONCLUSION

For the foregoing reasons, the Writ of Mandamus should be granted.

Respectfully submitted

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JAN., 1984